

May 13, 2013

**CITY COUNCIL STUDY SESSION ITEM**

**SUBJECT**

Proposed Code of Ethics for Council, Boards and Commissions

**STAFF CONTACT**

Lori M. Riordan, City Attorney, 452-7220

Myrna L. Basich, Assistant City Manager/City Clerk, 452-2733

**FISCAL IMPACT**

The amount would be nominal, based on number of advisory opinions needing to be sought or complaints evaluated in any given year.

**POLICY ISSUES**

Whether to repeal the City's existing and outdated Code of Ethics for Council, Boards and Commissions which refers to a repealed state statute, and provide for a new, aspirational code that is Bellevue-specific, and provides definitions and specific processes for improving the transparency in addressing ethics questions for officials and the public.

**DIRECTION NEEDED FROM COUNCIL**

☒ Action

☒ Discussion

☐ Information

Selection of which, if any, of the proposed amendments to the draft Code of Ethics modeled on Kirkland's regulations should be included in the final form of this proposed legislation. Additionally, staff are seeking Council confirmation of the process for addressing complaints and their investigation by the Ethics Officer.

**BACKGROUND/ANALYSIS**

On Monday, May 6, 2013, staff presented an initial draft of a proposed new Code of Ethics for Council, Boards and Commissions modeled on the Kirkland ethics ordinance adopted in 2012. During that presentation staff laid out the questions and comments received from individual Councilmembers and provided responses. Due to the lateness of the hour, staff were not able to secure direction on the majority of issues raised by Councilmembers. Council directed that this item be brought back for further discussion on Monday, May 13, 2013.

To facilitate discussion, staff have again listed the questions and comments below and, where appropriate, have proposed language that could be included in the ethics ordinance to address the question or comment. We have also identified those questions and comments for which amendments to the proposed ordinance were either not requested or would not be appropriate for inclusion in this chapter of the City Code. In the latter instance, we have identified other regulations or venues where concerns could be addressed.

We have also attached a proposed ordinance incorporating most of the proposed amendments discussed below. Because some of the amendments necessitated renumbering some subsections of the proposed code, the discussion contained in this memorandum reflects the new subsection numbers for ease of reference. The ordinance also incorporates the second of the three options provided to Council for the final section of the proposed code—BCC 3.92.070. Although we did not have the opportunity to secure explicit feedback from all Council members regarding which of the three options should be selected, the discussion seemed to focus upon this option for processing and investigation of complaints. The proposed ordinance does not include one of the requested edits discussed—the Nepotism policy change—because we are specifically recommending against adding that language to this code. One other item in the proposed Ordinance that could not be finalized is the length of time in which complaints must be filed. Since we had requests for both shorter and longer limitations periods, Council will need to choose one in order to complete this Ordinance.

#### **Questions and Responses:**

1. *3.92.020.B Is the definition of “relative” too broad? Should aunts, uncles, nieces and nephews be included in this definition?*

#### **Proposed amendment:**

B. “Relative” means spouse or domestic partner, child, step-child, parent, step-parent, parent-in-law, grandparent, grandchild, sibling, ~~aunt, uncle, niece, nephew~~, son- or daughter-in-law, brother-or sister-in-law.

2. *3.92.020.C. Are there alternatives to the definition of “Financial interest” as written?*

#### **Possible alternative:**

C. “Financial interest” except as otherwise limited in this chapter, means rights of a monetary nature with a readily identifiable cash value in a state-regulated entity, such as a corporation, LLC, firm or enterprise, **but shall not include remote interests such as that of a non-salaried officer of a nonprofit corporation; that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; or that of a landlord or tenant of a contracting party.**

3. *3.92.030.B Appearance of conflict disclosure should also include a verbal statement in an open meeting identifying that a written disclosure has been prepared so as to provide the public with notice of the writing should anyone want to request a copy of the written disclosure.*

Proposed amendment:

B. *Appearance of Conflict.* If it could appear to a reasonable person, having knowledge of the relevant circumstances, that the Official's judgment is impaired by the appearance of a conflict, the Official shall not participate in the matter until after making a public, written disclosure of the facts giving rise to the appearance of a conflict. **The Official shall make a statement regarding the existence of the written disclosure at the next public meeting at which the subject of the disclosure is scheduled to be discussed.**

4. *3.92.030.B.1 and .2 descriptions of "appearance of conflicts" seems unclear. What situations would these apply to?*

Response: This subsection must be read in conjunction with subsection A which expressly disqualifies Officials from participating in actions where the Official has a "financial interest" as defined in this code. It is possible for an Official to have some financial stake in an action that does not rise to the level of interest to trigger disqualification, but which to a reasonable person could appear to be a disqualifying financial stake. This subsection is designed to provide that the Official clarify for citizens that the specific financial interest is not one which would require recusal.

5. *3.92.030.F.1. This section does not appear to cover a situation where an Official is offered a gift from a citizen because of a social relationship and the same gift is offered to a spouse who does not share that social relationship.*

Response. A reasonable interpretation of this section would extend the social relationship exception to the gift prohibition to a spouse. Under these circumstances, it is reasonable to assume that the gift is extended to the spouse because of something other than the Official's position with the City.

6. *3.92.030.F.2. Exceptions to prohibited gifts. Does this subsection permit Officials to accept tickets to City-sponsored events?*

Response: Yes, the Official may accept a ticket to a City-sponsored event. This subsection does not exempt tickets provided to family members however.

7. *3.92.040 Ethical standards seems to have some internally inconsistent language. Although it states that Officials are encouraged to comply with the standards enumerated in this section, isn't it true that Officials are required to comply with applicable laws relating to ethics in public service?*

Response: Subsection A does specifically state the requirement to comply with applicable laws. The section could, however, be re-written to be more clear in this manner:

**3.92.040 – ETHICAL STANDARDS**

A. In addition to Section 3.92.030 of the Code of Ethics, which shall be administered by the Ethics Officer, **Officials shall comply with the following standards:**

*Compliance with other laws.* Officials shall comply with Federal, State and City laws in the performance of their public duties. These laws include, but are not limited to: The United States and Washington constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and City ordinances and policies. See Appendix A. Officials shall comply with the requirements of RCW 42.17.020 through .060 regarding contract interests. As required by RCW 42.17.750, no Official shall knowingly solicit or encourage, directly or indirectly, any political contribution from any City employee. Except under limited circumstances described in RCW 42.17.130, no Official may use or authorize the use of the facilities of the City for the purpose of assisting a campaign for the election of any person to office, or form the promotion of or opposition to any ballot proposition in a manner not available to the general public on the same terms.

**B. Officials are also encouraged to comply with the following standards: . . . .**

(The remaining subsections for ethical standards are renumbered in the attached proposed ordinance.)

8. *3.92.040.B.9 Ethical Standards--Nepotism. The prohibition against appointment of relatives of Officials being appointed to Boards and Commissions should be extended to relatives of staff.*

Response: This approach is not recommended. An alternative is to address this within the guidelines for the appointment process that have been drafted for Council discussion. For example, the guidelines could discourage appointment of staff relatives, but provide flexibility in order to allow for such relationships where the staff member's position with the City does not intersect with the work of the Board or Commission to which the relative is seeking appointment, or where a particular candidate has a unique combination of skills that would benefit the work of the Board or Commission.

Should Council choose to expand the Ethical Standards found in 3.92.040.J the amended language could read as follows:

9. *Nepotism.* The City Council will not appoint Relatives of City Council Members **or City staff** to boards or commissions or other appointed positions.

9. *3.92.040.B.10. Advocacy. This section should make distinctions between the responsibilities of Officials appointed to governing bodies by outside authorities such as the Governor, Attorney General, or County Executive. In those instances, the Official should not necessarily be viewed as being required to represent the official position of the City.*

Response: The most appropriate test may not necessarily be to focus on the appointing authority, but would be what the enabling legislation or other guiding documents for a specific governing body provide for making the selection of appointees. If, for example, an appointee is to be selected as a representative of large metropolitan areas or as a representative of western Washington cities, further inquiry should be made to determine what sorts of issues the

governing body will be addressing in that role. It may be that Bellevue-centric advocacy is what is expected and sought in certain instances. If that is the case, then perhaps this subsection could be amended to read:

10. *Advocacy.* When acting in an official capacity as a City Official representing the City, Officials shall represent the official policies or positions of the City Council, board or commission to the best of their ability when the City Council, board or commission has taken a position or given an instruction. **When a City Official is appointed to fill an Official role on a governing body in a capacity that is not dependent upon their status as a City of Bellevue Official, but, for example, as a representative of a geographic area, the Official shall endeavor to represent the policies or positions consistent with those of the constituency he or she has been appointed to represent.** When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Bellevue, nor will they allow the inference that they do. Officials have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to make or display endorsements during Council meetings, board/commission meetings, or other official City meetings. However, this does not preclude Officials from participating in ceremonial occasions, community events or other events sponsored by civic groups.

10. *Ethical Standards.* *This ethics code contains several standards for the conduct of Officials. Shouldn't staff's ethics code also contain corresponding standards requiring that staff carry out the official policies of the City as set by the City Council? Alternatively, if that chapter is not the appropriate vehicle, the HRPPM or Personnel Code should include this provision.*

Response: We have not provided language for inclusion in this ethics code since it does not apply to staff, by its terms. If Council desires to address more explicit direction in other chapters of the City Code, the most appropriate vehicle would be the City Manager Chapter, 3.04.

11. *3.92.050. Ethics Officer.* *Two questions were raised about qualifications or requirements for the Ethics Officer—whether the successful candidate could be required to be an attorney and whether confidentiality could be imposed on the Ethics Officer.*

Response: These issues are best dealt with in the context of giving direction to the City Manager in the hiring or contracting process rather than writing them into the Ethics Code itself. There are pros and cons to narrowing the field of candidates for the work of Ethics Officer by limiting the position to only licensed attorneys. The position itself will not carry an attorney-client privilege, as the Officer will not be giving legal advice to the City Council on how to address violations or potential violations. This is the responsibility of the City Attorney once the Ethics Officer has made factual determinations.

On the other hand, attorneys are well-suited to this type of analysis by virtue of training in statutory construction. On balance, we do not recommend that the position be limited in this

manner so as to allow for consideration of a wider pool of qualified candidates. As to the confidentiality question, it undoubtedly would be appropriate to require as a contractual condition that the Ethics Officer maintain confidentiality and not discuss his or her findings or factual determinations except with the City unless subpoenaed to do so. If Council is inclined to include such a requirement in the Ethics Code itself, proposed language could read as follows:

A. The City Council creates the position of Ethics Officer. The City Manager will contract with one or more agencies or persons to fill this position. The Ethics Officer will provide for annual review of this Code of Ethics, review of training materials provided for education regarding the Code of Ethics, and advisory opinions concerning the Code of Ethics. The Ethics Officer shall also be responsible for the prompt and fair enforcement of its provisions when necessary, **and shall at all times maintain the impartiality of the office by revealing information provided to the Officer only in the context of rendering opinions to the City and its Officials and staff as necessary or in response to legal process.**

12. 3.92.050. *The Ethics Officer should be specifically directed to consider the effectiveness of this ethics code and propose any appropriate changes to the Council that would improve on the process in the first two-year cycles of the enactment of the code.*

Response: The proposed code currently provides for such a review and proposals without specifying a schedule. If Council wishes to specifically adopt a schedule, the language could be amended as follows:

B. The Ethics Officer, in addition to other duties, ~~may~~ **shall conduct a review of this ethics code in 2015 and again in 2017 and may** recommend changes or additions to this Code of Ethics to the City Council **designed to improve the effectiveness and efficiency of processing ethics questions.** The Ethics Officer shall provide input into and review the training materials and program developed for this Code of Ethics.

13. 3.92.060 *Advisory Opinions. Two specific concerns have been raised regarding the timing of issuance of advisory opinions, given that the proposed Ethics Code allows the Ethics Officer up to 45 days to issue an advisory opinion. First, if an Official seeks advice on whether the “appearance of a conflict” exists requiring written and verbal disclosure, could this first be sought from the City Attorney to speed up the process and not delay Council discussions, for example. Alternatively, could the time be shortened for issuance of advisory opinions by the Ethics Officer?*

Response: The timing of the Ethics Officer’s work is discretionary with Council and could be shortened in instances where “appearance of conflict” is involved. This is probably more appropriate than providing for separate responders for questions regarding “appearance of conflict” due to a financial interest of an Official or relative falling below the threshold for disqualification. Proposed language for an amendment could read as follows:

C. The Ethics Officer will endeavor to respond to requests for advisory opinions regarding “appearance of conflict” within fourteen (14) days and all other requests within forty-five (45) days of submission of the request, or more rapidly if the requester expresses urgency in the request.

14. *3.92.060 Advisory Opinions. Another question related to the length of time involved in securing advisory opinions took a different approach. Could Council vote upon a request that an Official recuse himself or herself from participating in a matter during the pendency of a determination by the Ethics Officer? Could this also apply to matters that involve multiple discussions and actions during the pendency of an investigation upon a complaint?*

Response: Council could in fact make such a request by vote, however it would not be binding. Such a provision would be more appropriate for inclusion in Council Rules, however, as opposed to this Ethics Code, so no amendment to this ordinance is proposed.

15. *3.92.070 Complaints. The Kirkland model ordinance provides a two-year limitations period for complaints that an Official has violated the ethics code to be filed with the City. Could Council select a different time period?*

Response: Yes, there is no legal requirement that a limitations period be of a specific length. Two suggestions were made on this question—an 18 month limitation period and a 4-year limitation period. If Council wishes to amend this provision, proposed language could read as follows:

- e. The complaint must be filed within ~~two years~~ (18 months/ four years) of the date of the occurrence or occurrences alleged to constitute a violation of the Code of Ethics.

16. *Is there any ability for the City to pay attorney’s fees for the accused Official? We do not want to see this code used as a weapon against Officials in a manner that could become very costly.*

Response: In some circumstances, it could be appropriate for the City to retain counsel for an Official at the City’s expense. Specifically, if an Official sought an advisory opinion and was cleared to participate by the Ethics Officer but then drew a complaint for having done so, it may be appropriate for the City to provide legal representation. We have not proposed any amendatory language for this proposal, however, because City Code provides the parameters under which any City employee or official is entitled to representation in Chapter 3.81. If Council desires to make provision for legal counsel in the circumstances outlined above, we would propose to make amendments to Chapter 3.81 to address that issue.

17. *3.92.070.A.3 Service of Complaint on Respondent Official. The timing of service of the complaint seems to conflict with filing and service of preliminary orders by the Ethics Officers in subsection A.2.*

Response: This is correct. Additionally, while it appears that the purpose of delaying service of the Complaint on the respondent Official seems to be designed to avoid undue concern where a complaint does not meet the threshold for further investigation, Officials may well prefer to learn of the complaint at the time it is served on the City, regardless of whether it has merit. For this reason, we propose simply striking subsection A.3, including the respondent in the list of recipients to be served upon filing of the complaint, and re-numbering the other subsections. Amendment to subsection A.2 to provide for service on the respondent Official could read as follows:

2. Complaints shall be filed with the City Clerk who shall forward the complaint and any accompanying documentation and evidence to the Ethics Officer **and the respondent Official** within two business days.
18. *3.92.070.A.6. This subsection provides that the Ethics Officer's decision and recommendations be submitted to the City Council for consideration of remedial actions and/or sanctions. Is there any legal requirement that sanctions be imposed? What sort of sanctions would be involved?*

Response: There is no legal requirement that the Council -impose -sanctions upon Officials found by the Ethics Officer to have violated this ethics code. Some state laws do impose an automatic fine upon Officials, such as RCW Chapter 42.23, Contract Interests, for violations. Council Rules do not include, at the present time, any sanctions, monetary or otherwise for misconduct of Officials. In the past, Bellevue's Councils have voted to censure misconduct by individual officials, but this mechanism has not been used in recent history. Because Council expressed a desire that this Ethics Code be aspirational, rather than focus on enforcement, we have not suggested that Council include any monetary sanctions in this code or in Council Rules. Remedial action, however, would be required if an Official had participated in a matter from which he or she should have been recused, so reference to such measures is appropriate. Amendment to this subsection to remove the reference to sanctions could read as follows:

6. If the final decision of the Ethics Officer contains a determination that one or more violations of this Code of Ethics has occurred, the decision shall also contain any recommendations of the Ethics Officer to the City Council for any remedial action ~~or sanction that the Council may find appropriate and lawful under the Council's Rules.~~ If no appeal is filed in superior court, the Council in consultation with the City Attorney shall, within 45 days of the date of the decision, determine what, if any, of the recommendations of the Ethics Officers to adopt. Such determination shall be adopted at an open public meeting by a majority vote of those Officials who are not respondents to the complaint or complaints.
19. *3.92.070 Complaints, Investigations. Council had requested that options be provided for a process by which to address complaints of violations of this Ethics Code.*

Staff introduced three options and included copies of the three versions in ordinance form in the Council Packet for May 6. As noted above, although we were unable to conclude discussions of which of the three options were preferable to a majority of Council members, it appeared that Option B likely had more support than A, which would have provided for a formal and potentially costly and time-consuming hearing process, and C which would have required the Ethics Officer to draft the process upon being retained by the City. Concern was expressed that this might not be completed prior to the City receiving a complaint.

**ALTERNATIVES**

1. Adopt Ordinance No. 6110, as amended through continued discussion at the May 13 meeting.
2. Provide direction to staff on additional refinements to the draft Ethics Ordinance.
3. Provide alternative direction to staff.

**RECOMMENDATION**

Adopt Ordinance No. 6110, as amended through continued discussion at the May 13, 2013 meeting.

**ATTACHMENTS**

Proposed Ordinance No. 6110.

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6110

AN ORDINANCE repealing Bellevue City Code Chapter 3.92 and Ordinance No. 4049, and adopting new Bellevue City Code Chapter 3.92 providing for a Code of Ethics - City Council and City Boards, Commissions and Committees.

WHEREAS, the citizens and business of Bellevue are entitled to have fair, ethical and accountable local government that has earned the public's full confidence for integrity; and

WHEREAS, adopting a Code of Ethics for members of the City Council and the City's boards and commissions will promote public confidence in the integrity of local government and fair operation; and

WHEREAS, the Code of Ethics will provide the basis for education and training for City officials both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Bellevue City Code Chapter 3.92 and Ordinance No. 4049 are hereby repealed.

Section 2. A new Chapter 3.92 is hereby adopted to read as follows:

3.92.010 – POLICY

A. *Purpose.* The Bellevue City Council has adopted a Code of Ethics for members of the City Council and Council-appointed public bodies to promote public confidence in the integrity of local government and its fair operation. This Code of Ethics will provide the basis for education and training for city officials, both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed.

B. *Intent.* The citizens and businesses of Bellevue are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. In keeping with the City of Bellevue's commitment to excellence, the effective functioning of democratic government therefore requires that:

(1) public officials, both elected and appointed, comply with the laws and policies affecting the operations of government;

(2) public officials be independent, impartial and fair in their judgment and actions;

(3) public office be used for the public good, not for personal gain; and

(4) public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

### 3.92.020 – DEFINITIONS

A. “Official” means a member of the City Council or a member of Council-appointed City boards and commissions and other Council-appointed task groups or committees, including youth members.

B. “Relative” means spouse or domestic partner, child, step-child, parent, step-parent, parent-in-law, grandparent, grandchild, sibling, son- or daughter-in-law, brother- or sister-in-law.

C. “Financial interest” except as expressly limited herein means rights of a monetary nature with a readily ascertainable cash value in a state-regulated entity such as a corporation, LLC, firm or enterprise but shall not include remote interests such as that of a non-salaried officer of a nonprofit corporation; that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; or that of a landlord or tenant of a contracting party.

### 3.92.030 – PROHIBITED CONDUCT

A. *Conflicts of Interest.* In order to ensure their independence and impartiality on behalf of the common good, Officials shall not participate in government decisions in which any of the following has a financial interest:

1. The Official,

2. A relative,

3. An individual with whom the Official resides, or

4. An entity that the Official serves as an officer, director, trustee, partner or employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. This section shall not apply to (a) decisions regarding taxes or fees, (b) if the financial interest is shared with more than ten percent (10%) of the City’s population similarly situated under the applicable circumstances of the proposed legislation or other action, or (c) if the financial interest exists solely because of the Official’s ownership of less than one percent (1%) of the outstanding shares of a publicly traded corporation.

B. *Appearance of Conflict.* If it could appear to a reasonable person, having knowledge of the relevant circumstances, that the Official's judgment is impaired by the appearance of a conflict, the Official shall not participate in the matter until after making a public, written disclosure of the facts giving rise to the appearance of a conflict. The Official shall make a statement regarding the existence of the written disclosure at the next public meeting at which the subject of the disclosure is scheduled to be discussed. For purposes of this disclosure "appearance of a conflict" would exist because of either:

1. A personal or business relationship not covered under the foregoing paragraph, or
2. A transaction or activity engaged in by the Official.

C. *Misuse of Public Position or Resources.* Except for infrequent use at little or no cost to the City, Officials shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities, for other than a City purpose.

D. *Representation of Third Parties.* Except in the course of official duties, Officials shall not appear on behalf of the financial interests of third parties before the bodies on which the Officials serve or in interaction with assigned staff. Further, the members of the City Council shall not appear on behalf of the financial interest of third parties before the Council or any board, commission or proceeding of the City, or in interaction with staff.

E. *Solicitation of Charitable Contributions.* No official may make direct personal solicitations for charitable contributions from City employees.

F. *Gifts and Favors.* Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited or received or given, or to a reasonable person, would appear to have been solicited, or received or given with intent to give or obtain special consideration or influence as to any action by the Official in his or her official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law. They shall not accept or solicit any gifts, favors or promises of future benefits except as follows:

1. No Official may accept gifts, other than those specified in subsection 2 of this section, with an aggregate value in excess of fifty dollars (\$50) from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars (\$50) in accordance with RCW 42.52.150(1); provided, that if the fifty dollar (\$50) limit in RCW 42.52.150(1) is amended, this section shall be deemed to reflect the amended amount. For purposes of this section, "single source" means any person, corporation, or entity, whether acting directly or through

any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs. The value of gifts given to an Official's family member or guest shall be attributed to the Official for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

2. The following items are presumed not to influence the vote, action, or judgment of the Official, or be considered as part of a reward for action or inaction, and may be accepted without regard to the limit established by subsection 1 of this section:

- a. Unsolicited flowers, plants and floral arrangements;
- b. Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- c. Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- d. Unsolicited items received by an Official for the purpose of evaluation or review, if the Official has no personal beneficial interest in the eventual use or acquisition of the item;
- e. Informational materials, publications or subscriptions related to the recipient's performance of official duties;
- f. Food and beverages consumed at hosted receptions where attendance is related to the Official's duties for the City;
- g. Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental or community organization;
- h. Unsolicited gifts from dignitaries from another state or a foreign country which are intended to be personal in nature; and
- i. Food and beverages on infrequent occasions in the ordinary course of meals where attendance by the Official is related to the performance of official duties.

3. The presumption in subsection 2 is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

G. *Confidential Information.* Officials shall not disclose or use any confidential information gained by reason of their official position for other than a City purpose. "Confidential Information" means:

1. Specific information, rather than generalized knowledge, that is not available to a person who files a public records request, and

2. Information made confidential by law.

3.92.40 - ETHICAL STANDARDS

A. In addition to Section 3.92.030 of the Code of Ethics, which shall be administered by the Ethics Officer, Officials shall comply with the following standards:

*Compliance with other laws.* Officials shall comply with Federal, State and City laws in the performance of their public duties. These laws include, but are not limited to: The United States and Washington constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and City ordinances and policies. See Appendix A. Officials shall comply with the requirements of RCW 42.17.020 through .060 regarding contract interests. As required by RCW 42.17.750, no Official shall knowingly solicit or encourage, directly or indirectly, any political contribution from any City employee. Except under limited circumstances described in RCW 42.17.130, no Official may use or authorize the use of the facilities of the City for the purpose of assisting a campaign for the election of any person to office, or form the promotion of or opposition to any ballot proposition in a manner not available to the general public on the same terms.

B. Officials are also encouraged to comply with the following standards:

1. *Personal Integrity.* The professional and personal conduct of Officials must be above reproach and avoid even the appearance of impropriety. Officials shall refrain from abusive conduct, threats of official action, personal accusations or verbal attacks upon the character or motives of other members of Council, boards and commissions, the staff or public. Officials shall maintain truthfulness and honesty and not compromise themselves for advancement, honor, or personal gain. Additionally, Officials shall not directly or indirectly induce, encourage or aid anyone to violate this Code of Ethics and it is incumbent upon Officials to make a good faith effort to address apparent violations of this Code of Ethics.

2. *Working for the Common Good.* Recognizing that stewardship of the public interest must be their primary concern, Officials will work for the common good of the people of Bellevue and not for any private or personal interest, and they will ensure fair and equal treatment of all persons, claims and transactions coming before the City Council, boards and commissions. Officials need to be mindful that making special requests of staff – even when the response does not benefit the Official personally, puts staff in an awkward position.

3. *Respect for Process.* Officials shall perform their duties in accordance with the processes and rules of order established by the City Council and boards and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.

4. *Commitment to Transparency.* Transparency, openness and accountability are fundamental values of the City – and are also required by the laws of the state of Washington. The public has a right to inspect and copy public records unless exempt by law from disclosure. All materials relating to the conduct of City government that are prepared, possessed, used or retained by any Official, including Email and other electronic records, are subject to requirements for retention, protection and disclosure. Officials may assume that all copies of materials received from City staff have already been archived and do not need to be retained. Officials shall not discard, damage or destroy the original copy of any public record unless the City complies with the record retention schedules established under Chapter 40.14 RCW. Officials shall promptly provide any records requested by the Public Records Officer in response to a disclosure request under the Public Records Act, Chapter 42.56 RCW. It is the responsibility for the Public Records Officer together with the City Attorney, to decide which records meet the definition of “public record” and whether or not they are exempt from disclosure; Officials must not take it upon themselves to decide whether a record meets the definition of a public record, that a record is exempt from disclosure, or to otherwise conceal a record.

5. *Conduct of Public Meetings.* Officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; or otherwise interfering with the orderly conduct of meetings.

6. *Decisions Based on Merit.* Officials shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. *Ex parte Communications.* In quasi-judicial matters, Officials shall publicly disclose substantive information that is relevant to a matter under consideration by the Council or boards and commissions, which they may have received from sources outside of the public decision-making process.

8. *Attendance.* As provided in RCW 35A.12.060, a Council Member shall forfeit his or her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Unless excused, members of boards and commissions are expected to attend all meetings.

9. *Nepotism.* The City Council will not appoint Relatives of City Council Members to boards or commissions or other appointed positions.

10. *Advocacy.* When acting in an official capacity as a City Official representing the City, Officials shall represent the official policies or positions of the

City Council, board or commission to the best of their ability when the City Council, board or commission has taken a position or given an instruction. When a City Official is appointed to fill an Official role on a governing body in a capacity that is not dependent upon their status as a City of Bellevue Official, but, for example, as a representative of a geographic area, the Official shall endeavor to represent the policies or positions consistent with those of the constituency he or she has been appointed to represent. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Bellevue, nor will they allow the inference that they do. Officials have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to make or display endorsements during Council meetings, board/commission meetings, or other official City meetings. However, this does not preclude Officials from participating in ceremonial occasions, community events or other events sponsored by civic groups.

11. *Policy Role of Officials.* Officials shall respect and adhere to the council-manager structure of Bellevue City government as outlined by Chapter 35A.13 RWC. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and City staff. Except as provided by State law, Officials shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.

#### Appendix A

Ch. 9A.72 RCW	Perjury and interference with official proceedings
RCW 35A.12.060	Vacancy for nonattendance
Ch. 35A.13 RCW	Council-manager plan of government
RCW 35A.13.020	Incompatible offices
Ch. 40.13 RCW	Preservation and destruction of public records
RCW 42.17.130	Use of public office or agency facilities in campaigns – prohibition – exceptions
RCW 42.17.750	Solicitation of contributions by public officials or employees
Ch. 42.23 RCW	Code of ethics for municipal officers – contract interests
Ch. 42.36 RCW	Appearance of fairness doctrine – limitations
Ch. 42.56 RCW	Public Records Act

#### 3.92.050 – ETHICS OFFICER

A. The City Council creates the position of Ethics Officer. The City Manager will contract with one or more agencies or persons to fill this position. The Ethics Officer will provide for annual review of this Code of Ethics, review of training materials provided for education regarding the Code of Ethics, and advisory opinions concerning the Code of Ethics. The Ethics Officer shall also be responsible for the prompt and fair enforcement of its provisions when necessary, and shall at all times

maintain the impartiality of the office by revealing information provided to the Officer only in the context of rendering opinions to the City and its Officials and staff as necessary or in response to legal process.

B. The Ethics Officer, in addition to other duties, shall conduct a review of this ethics code in 2015 and again in 2017 and may recommend changes or additions to this Code of Ethics to the City Council designed to improve the effectiveness and efficiency of processing ethics questions.

### 3.92:060. - ADVISORY OPINIONS

A. Upon request of any Official, the Ethics Officer shall render written advisory opinions concerning the applicability of Sections 3.92.030 and 3.92.040 of this Code to hypothetical circumstances and/or situations solely related to the persons making the request. The Ethics Officer will not render opinions on matters that are the purview of other government agencies such as the Public Disclosure Commission or the King County Prosecutor.

B. Upon request of any Official, the Ethics Officer may also render written advisory opinions concerning the applicability of the Code of Ethics to hypothetical circumstances and/or situations related to a matter of city-wide interest or policy.

C. The Ethics Officer will endeavor to respond to requests for advisory opinions regarding "appearance of conflict" within fourteen (14) days and all other requests for advisory opinions within forty-five (45) days of submission of the request, or more rapidly if the requester expresses urgency in the request.

D. An Official's conduct based in reasonable reliance on an advisory opinion rendered by the Ethics Officer shall not be found to violate this Code of Ethics, as long as all material facts have been fully, completely, accurately presented in a written request for an advisory opinion, the Ethics Officer issues an advisory opinion that the described conduct would not violate the Code of Ethics, and the Official's conduct is consistent with the advisory opinion. The Ethics Officer reserves the right to reconsider the questions and issues raised in an advisory opinion and, where the public interest requires, rescind, modify, or terminate the opinion, but a modified or terminated advisory opinion will not form the basis of a retroactive enforcement action against the original requestor. Advisory opinions will contain severability clauses indicating that, should portions of the opinion be found to be unenforceable or not within the Ethics Officer's authority, the remainder of the opinion shall remain intact.

E. All Officials subject to this chapter are strongly encouraged to seek advisory opinions from the Ethics Officer at the earliest possible opportunity whenever an official has reason to believe that his or her circumstances could present a conflict of interest or the appearance of a conflict of interest or any other violation of this chapter.

### 3.92.070 - COMPLAINTS, INVESTIGATIONS, AND ENFORCEMENT

#### A. *Complaint procedures.*

1. Any natural person who believes an Official has committed a violation of the code may file a complaint with the Ethics Officer. Complaints shall be subject to the following requirements:

a. The complaint must be based upon facts within the personal knowledge of the complainant;

b. The complaint must be submitted in writing and signed under oath by the complainant;

c. The complaint must include a detailed factual description of the alleged violation including the date, time and place of each occurrence and the name of the person or persons who are alleged to have committed a violation. The complaint must also refer to the specific provisions of the Code of Ethics which are alleged to have been violated;

d. The complaint must be accompanied by all available documentation or other evidence known to the complainant to support the allegations of the complaint;

e. The complaint must be filed within eighteen months/two years/four years of the date of the occurrence or occurrences alleged to constitute a violation of the Code of Ethics.

2. Complaints shall be filed with the City Clerk who shall forward the complaint and any accompanying documentation and evidence to the Ethics Officer and the respondent Official within two business days. The Ethics Officer shall review the complaint for compliance with the requirements of subsection 1 of this section. Should the Ethics Officer find that:

a. The complaint is untimely; or

b. The complaint has not been signed under oath; or

c. The complaint does not, on its face, state facts which, if proven to be true, constitute a violation of the provision of this Code of Ethics referred to in the complaint; or

d. The complaint fails to refer to a specific provision of the Code of Ethics which is alleged to have been violated,

the Ethics Officer shall, within 10 working days of the filing of the complaint, enter a written order stating the Ethics Officer's findings and, except as hereinafter provided, dismissing the complaint. The written order shall be transmitted to the complainant,

the Official that is the subject of the complaint, and the City Council. If the Ethics Officer finds that the complaint is deficient pursuant to the findings in subsection 1(b) or (d) of this section, the Ethics Officer shall issue an order notifying the complainant that unless a corrected complaint is filed within five days of the issuance of such order, the complaint shall be dismissed. The complainant may appeal the dismissal of a complaint under this subsection by filing an action in the King County superior court for a writ of certiorari pursuant to Chapter 7.16 RCW within 10 days of the date of issuance of the order dismissing the complaint.

3. The respondent Official shall, within 20 days of the date of mailing or personal service of the complaint by the Clerk, file with the Clerk any response to the complaint the respondent Official wishes to make. A response to a complaint shall be made in writing signed under oath by the respondent. A response may include a detailed statement of facts pertaining to the complaint made on personal knowledge of the respondent and may include any matter constituting a defense to the complaint. A response should be accompanied by all available documentation or other evidence known to the respondent Official which the respondent wishes the Ethics Officer to consider. The respondent Official may stipulate to some or all of the facts alleged in the complaint and shall either admit or deny the alleged violation. If the violation is admitted, the respondent may also submit an explanatory statement and may request a particular disposition.

4. Upon receipt of a response to a complaint, the Ethics Officer shall review the complaint and response, together with all supporting documentation and evidence submitted by the complainant and the respondent Official. Within 10 days of receipt of the response (or, if no timely response is submitted, within 30 days of the date of mailing the complaint to the respondent Official by the City Clerk), the Ethics Officer shall issue a decision in writing, including findings of fact, conclusions of law and a determination of whether any violation of the Code of Ethics has been established. The final written decision shall be signed and dated by the Ethics Officer. The City Clerk shall deliver a copy of the final written decision to the complainant, the respondent Official, the City Council and to any other person who has submitted a written request therefor.

5. Either the complainant or respondent Official may, within 30 days of the date of the written decision, appeal to the King County superior court by writ of certiorari pursuant to Chapter 7.16 RCW.

6. If the final decision of the Ethics Officer contains a determination that one or more violations of this Code of Ethics has occurred, the decision shall also contain any recommendations of the Ethics Officer to the City Council for any remedial action. If no appeal is filed in superior court, the Council in consultation with the City Attorney shall, within 45 days of the date of the decision, determine what, if any, of the recommendations of the Ethics Officers to adopt. Such determination shall be adopted at an open public meeting by a majority vote of those Officials who are not respondents to the complaint or complaints.

Section 3. Severability. Should any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

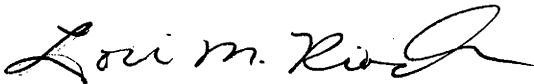
Section 4. Effective Date. This ordinance shall take effect and be in force thirty days after passage and publication.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2013  
and signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_,  
2013.

(SEAL)

\_\_\_\_\_  
Conrad Lee, Mayor

Approved as to form:



\_\_\_\_\_  
Lori M. Riordan, City Attorney

Attest:

\_\_\_\_\_  
Myrna L. Basich, City Clerk

Published \_\_\_\_\_